

# HOUSE . . . . No. 67.

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## Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, February 9, 1866.

The Committee on Elections, to whom was referred the Petition of David Thayer and A. M. McPhail, Jr., asking for the seats occupied by George A. Shaw and Eben Cutler, in this House, make the following

### R E P O R T :

That a copy of the returns from the city clerk showed that George A. Shaw had 374 and Eben Cutler had 376 votes; and that David Thayer had 367 and A. M. McPhail, Jr., had 365 votes. That it appeared on a careful count by the Committee, that George A. Shaw had 373; Eben Cutler, 377; David Thayer, 370; A. M. McPhail, Jr., 359 votes; A. McPhail, 3; A. W. McPhail, 1; or, counting the votes for A. McPhail and A. W. McPhail, for A. M. McPhail, Jr., A. M. McPhail, Jr. had 363 votes. Under the direction of the Committee, the petitioners filed specifications of the grounds on which they hoped to maintain their petition.

In their first specification, the petitioners asked for a recounting of the votes, which was done by the Committee.

In their second specification, the petitioners allege that they expect to prove that many ballots were cast for said Cutler and Shaw by persons who, at the time of voting, were not able to read the Constitution in the English language, and write their

names, and who were not prevented therefrom by physical disability, and who were not voters on the first day of May, 1857, and who were not sixty years of age or upwards at that time.

The petitioners, under this specification, called, as witnesses, Michael Murphy, Thomas Calido, John Ring, Daniel Murphy, Jeremiah Sexton, Daniel Falway, John Hayes, Michael McCarty, and Dennis Daley.

Of these, Michael Murphy, John Ring, Daniel Murphy, Jeremiah Sexton, could read and write, and the counsel for the petitioners, J. Q. A. Griffin, Esq., made no claim, after their testimony was received, that their votes should be deducted. It was admitted that Thomas Calido could write well enough to answer the requirements of the Constitution, but it was contended that he could not read well enough; but the Committee thought otherwise. Daniel Falvey was a voter before the amendment, and Dennis Daley, called also as to non-residence, did not vote at the election in November, 1865. His name was checked, but if any man personated Dennis Daley, and voted at the November election, it did not appear to the Committee for whom the vote was cast. This leaves the case of John Hayes and Michael McCarty to be considered, in a subsequent portion of the Report. William Crowley was called for some purpose, but no claim was made to have his vote deducted.

The third specification was, that they expect to prove that a number of ballots were cast at said election for said Shaw and Cutler by persons who had not resided in the Commonwealth for one year, and in the City of Boston for six months preceding said election.

Under this specification, Ethan Allen and Dennis Dailey were called. Ethan Allen was thought by the Committee not to be worthy of credit. Dennis Dailey, above named, did not vote.

The fourth specification was, that the petitioners expect to prove that a large number of ballots were cast at said election for said Shaw and Cutler, by persons who had not paid a tax within two years in this Commonwealth. Under this specification, Robert Philo, William R. Hood, John W. Bacon, Oscar Allen, and George F. Howard, were called by the petitioners. William R. Hood did not know for whom he voted. John W.

Bacon did not vote for representative. Robert Philo, Oscar Allen, and George F. Howard, testified that they paid a tax within the time prescribed by the Constitution; but the Committee were satisfied by the testimony of the city treasurer, and that of Perry Brigham, an assessor, that they had not paid a tax, as required. Winslow Herrick testified, that he had not paid, as required by the Constitution, as did Charles A. Gardner, called by the sitting members. All the last named, Robert Philo, Oscar Allen, George F. Howard, Winslow Herrick, and Charles A. Gardner, testified that they voted for Messrs. Thayer and McPhail. And the Committee are unanimously of opinion, that their votes should be deducted from those returned for Messrs. Thayer and McPhail. Deducting these votes, five in number, from Mr. Thayer, the result will be that he has 365, and Mr. McPhail has 358 votes.

In relation to John Hayes and Michael McCarty, the witnesses testified, that they could not read and write, but as their names had been put on the voters' list by Mr. McCleary, the city clerk, who testified, that before he put the names of voters on the lists, he heard them read and saw them write, and as it presents a question of some importance, how far the committee in such instances, should go behind the voters' lists, not necessary to be decided in this case, as their votes do not affect the result, the Committee have come to no conclusion whether their votes should be deducted or not. There were other specifications, but as no evidence was offered under them, it is not necessary to state them in the Report.

The Committee think it proper to say, that there was no evidence before them to implicate, either the petitioners or the sitting members in any unfair practices in the matter of the decision. In view of the premises, the Committee report leave to the petitioners to withdraw.

For the Committee,

T. G. BRAINERD.

